
CHAPTER VIII

RECOMMENDATIONS

In June 2000, the Judicial Council of California contracted with Policy Studies Inc. to conduct a review of the State's Child Support Guideline. That review included the following series of activities:

- The collection and analysis of child support order information from case files;
- A review of provisions other states' guidelines make for selected issues, in particular low income obligors, second families, and the use of gross or net income to calculate the support obligation;
- Administration of a survey of people who use the Guideline (e.g., judges, family law attorneys, parent/child advocates) to establish and modify support orders;
- An analysis of the costs of raising children; and
- Focus groups and interviews with parents who have experience with the Guideline.

The summary of findings from these activities is included in the preceding sections of this report. In this section, recommendations are provided for three key guideline issues that were the primary focus of the review. Those issues include:

- Treatment of low-income obligors,
- Use of gross or net income as a base to use in calculating the child support obligation, and
- Treatment of additional dependents.

TREATMENT OF LOW-INCOME OBLIGORS

Background

There are three provisions in the existing guideline of most relevance to low-income obligors.

Low-Income Adjustment. The court must rule on whether a low-income adjustment shall be made if the obligor's net income is less than \$1,000 per month net. If the court rules in favor of the adjustment, it shall reduce the formula-determined order amount by the percentage difference between the obligor's net monthly income and \$1,000 [Fam. Code §4055(b)(7)].

Automation of the Low-Income Adjustment. The California Family Code provides that if the court uses a computer to calculate the child support order, the computer



program shall not automatically default affirmatively or negatively on whether a low-income adjustment is to be applied. If the low-income adjustment is applied, the computer program shall not provide the amount of the low-income adjustment. Instead the computer program shall ask the user whether or not to apply the low-income adjustment, and if answered affirmatively, the computer program shall provide the range of the permitted adjustment [Family Code §4055 (c)].

Presumed Income. The State Welfare Code addresses the situation where the obligor's income is unknown and the order is being established by a local child support agency [Welfare and Institutions Code §11475.1(c)]. If the obligor's income or the obligor's income history is unknown to the local child support agency, income shall be presumed to be an amount that results in a court order equal to the minimum basic standard of adequate care for the supported child(ren) [Fam. Code §17400(d)(2)]. There is a schedule of support order amounts published annually that links presumed income and respective presumed order amounts. In State fiscal year 1999/2000, for example, the presumed income for an obligor with one child to be supported was \$1,966 per month. The child support order amount for that income level was \$390 per month.

Overview of the Low-Income Issue

There are four questions the Judicial Council must address in reviewing how the guideline treats low-income obligors.

- Is the threshold the guideline used to determine eligibility for a low-income adjustment to the support order adequate?
- Is the method used to adjust the support order appropriate?
- Should the adjustment threshold and adjustment amount be presumptive or advisory on the court?
- What income should be presumed when the obligor's income is unknown and the support order is being established by the local child support agency?

Low-Income Threshold

A common theme in the responses to the survey of guideline users was that the low-income threshold of \$1,000 net per month is too low. When asked what changes they would recommend to the low-income adjustment, the highest income threshold recommended was \$3,000 net per month. Other respondents recommended that the guideline include a threshold range that took into account differences in the cost of living among California's counties. In their opinion, the threshold of \$1,000 may work in some counties, but not in others.

Although each state is unique, it should be noted that the existing obligor income threshold of \$1,000 net per month is on the high-end relative to other states. As

displayed in Chapter IV, the income threshold many states use before they establish minimum order amounts is \$617 per month net. This is equivalent to the federal poverty level for one person in 1998. In high income states (e.g., New York and Connecticut), the threshold is higher. In New York, for example, the low-income adjustment formula is 135% of the federal poverty level for one person, which for 2001 puts it at \$966 net per month. In Connecticut, the income threshold used for applying the low-income adjustment varies depending upon the number of children for whom support is being awarded. For obligors with one child, the threshold is \$953 net per month, while for six children the threshold is \$1,689 per month.

Self-Support Reserve

Most states allow the obligor a self-support reserve; that is, enough income after the payment of child support and taxes to maintain at least a subsistence level of living. Typically, this amount is related to the federal poverty guideline for one person. (The 2001 poverty guideline for one person is \$716 net per month.) The support order is set at the difference (or a proportion of the difference) between the obligor's net income and the self-support reserve (see Exhibit IV-3 for a state by state summary). Another approach is demonstrated by the now repealed Agnos Child Support Standards Act of 1984, in which California provided a self-support reserve for the paying parent based upon the minimum basic standards of adequate care (MBSAC). MBSAC is a figure calculated to take into account the amount of money needed to meet a person's basic needs as determined by the California State Department of Social Services (see Welfare and Institutions Code §11452). This figure is adjusted each year and is currently \$402 per month.

The current California guideline does not allow a self-support reserve for the obligor. Therefore, it is feasible for an obligor with net income above \$1,000 per month — hence, ineligible for the low-income adjustment under the California guideline — to be left with income below the poverty level. This is particularly true for cases with three or more children or for cases with additional child expenditures (e.g., child care or extraordinary medical expenses). The following scenario is a good example: the parents have three children, their incomes are equal (\$1,100 per month net), and the paying parent has primary physical responsibility for the children 20 percent of the time. Using the guideline formula, the monthly child support obligation would be \$396. After payment of the child support order, the obligor would have available income of \$704, which puts him or her below the 2001 poverty level for one person.

Another issue, and one that other states' guidelines address, is whether the self-support reserve should be made before or after add-ons (e.g. for childcare, extraordinary medical expenses, and other additional child expenses). Most states that incorporate a self-support reserve and low-income adjustment apply it before the add-ons are applied. However, in some situations, where the self-support



reserve is applied before adding the add-ons to the base support, the paying parent may actually be left with income substantially below the self-support reserve. For instance, this could be the case using the above example of the paying parent with 3 children if there was a childcare add-on of \$300. The paying parent has net monthly income of \$1100 per month and a base child support obligation of \$396 for 3 children. This obligation would leave the paying parent with \$704 per month. If the federal poverty guideline was used as the self support reserve (\$716 for one person) the base child support would be reduced to \$384 in order to allow the parent a self support reserve equal to the poverty level. However, if there was an order for the parties to share an additional \$600 per month in childcare (\$300 paid by each parent), the paying parent would then be left with \$416 per month which is well below the self-support reserve.

Discretionary Application

As evident from the case file review findings, the low-income adjustment is applied infrequently (i.e., in 6% of the eligible cases). It is not certain why the frequency is so low. One possible explanation is that the low-income adjustment formula is too complex to compute manually, although no one mentioned that problem in the responses to the guideline users survey. This provision requests that the user of the automated guidelines affirm that the low-income adjustment is applied before it is calculated. This, in itself, may be a problem, since the person using the automated guidelines calculator may not be the judge or commissioner signing the order. A clerk or attorney may use the automated worksheet and then provide the printout to the judge or commissioner. An indicator for low-income applied or not applied was not observed on any of the computer printouts of guidelines calculations that were reviewed in the case files.

Further, observations over the years of how states apply their guidelines suggests that judges and commissioners either consistently apply a discretionary adjustment or consistently do not apply a discretionary adjustment.

Presumed Income

Based on information compiled by the Federal Office of the Inspector General (discussed in Chapter IV), 48 states impute income when income is unknown. Among those states, 35 of them base it on the presumption that the obligor is employed at a full-time, minimum wage job. This results in a presumed gross monthly income of \$892 per month (\$784 per month net in California). This is far lower than the income presumed under Welfare and Institutions Code §11475.1(c), which was \$1,966 per month for one child in fiscal year 1999/2000 and higher amounts for more children. The California presumption results in order amounts significantly higher than those ordered in the rest of the nation.

For all other states, the median monthly order amounts — assuming that the obligor is employed full-time at minimum wage and the obligee's income is \$0 — would be \$152 for one child and \$205 for two children. The range is \$25 to \$223 per month for one child, and \$25 to \$281 per month for two children. In short, when the obligor's income is unknown, California sets order amounts that are much higher than order amounts in other states.

Regardless of this fact, there are no standards to follow. Indeed, the issue of entering default orders and imputing income when income is unknown has become a national concern. It is frequently a topic at national child support conferences and is a topic the National Child Support Enforcement Association has recommended for further study. The historical premise was that notification of a default order would motivate the noncustodial parent to provide accurate financial information to the courts. Currently, there is no known research to prove or disprove this premise; yet, several states desire research on the issue.

California applies presumed income in cases being established by the local child support agencies where the obligor's income or income history is unknown to that agency. According to the Federal Office of the Inspector General, this is typically in situations where the obligor fails to appear or provide documentation of his/her income. Even in these circumstances, agency caseworkers typically search automated state databases and tax records for income information. If no income or income history is found, a proposed judgment is prepared based upon presumed income (currently \$1,966 per month for one child). If the obligor does not file an answer, a default judgment is automatically entered based upon this presumed amount. Anecdotal information suggests that when these obligors do come forward, their actual income is frequently substantially less than the presumed amount. The historical premise was that the setting of default orders at high levels would result in non-custodial parents coming forward to provide accurate financial information to the courts. Again, anecdotal information from local courts and child support agency staff would suggest that this may not be true in substantial numbers of cases. While there is a statutory period for the setting aside of these defaults (see Code of Civil Procedure §473 and Family Code §17432), obligors who fail to timely set aside the default may be saddled with large arrearages which were never based upon their actual ability to pay support.



Recommendations Regarding Treatment of Low-Income Obligor

Income Threshold

If California wants definitely to include an income threshold into the child support guideline, then the threshold now used to determine the obligor's eligibility for a low-income adjustment — \$1,000 per month — seems appropriate. It is higher than that of most states, but close to the amount in high-income states (e.g., Connecticut and New York). Also, it exceeds the federal poverty standards for a single person. Nevertheless, the variability in the cost of living among California counties that survey respondents highlighted is appreciated.

One difficulty with establishing a fixed threshold is that anyone whose income is even slightly above the threshold may not qualify for a low-income adjustment. Another approach, which could be used either instead of the low-income adjustment or in addition to it, is to incorporate a self-support reserve directly into the guideline to ensure that the obligor has enough income after payment of the support obligation that he/she can maintain at least a minimum standard of living. A discussion of how self-support reserve could be incorporated into the existing guideline is provided below.

Adjustment Formula

As previously illustrated, there are situations under the existing guideline where payment of the guideline-determined amount would leave the obligor with income below the poverty level for one person. The legislature should consider the following options as potential approaches to addressing this situation:

- Replace Family Code §4055(b)(7) with an adjustment based on a self-support reserve.
- Compute the low-income adjusted order as a proportion of the difference between obligor net income and the self-support reserve. The proportion should be on a sliding scale that increases with the number of children (i.e., 90% for one child; 91% for two children; 92% for three children and so forth).

To illustrate how this would work, assume an obligor has three children and the obligor's net monthly net income is \$1,100 per month. The obligor's income available for child support would be \$384 [\$1,100 - \$716, which is the federal poverty level for one person]. Under the low-income adjustment, the support order for three children would be 92 percent of this amount, or \$353 per month. This amount would be compared to the guideline-determined amount and the lower of the two amounts would become the support order.

Other Logistics of the Proposed Formula

The proposed low-income adjustment is an easy formula to program into an automated guideline calculation. It could also be easily incorporated into a guideline worksheet. An example of such a worksheet is provided in Exhibit IV-4.

Applying the low-income adjustment after additions for other child expenditures are added on (e.g., childcare, health care costs, education and special needs) can be problematic. Add-ons are often not set at a dollar amount, (they are typically set at 50 percent of actual costs), which would make it difficult to calculate the low-income adjustment, after the consideration of additional costs. In the case of uninsured health care costs, the most frequently applied add-on, this may vary substantially from year to year.

Discretionary Adjustment

If California decides to adopt a self-support reserve as its low income adjustment, then the adjustment should be made presumptive to ensure that it will be applied. If it is left as a discretionary tool, it will likely be applied as infrequently as it is now.

Presumed Income

Application of California's presumed income results in order amounts that are significantly higher than those ordered in the rest of the nation. Among those states, 35 of them base the presumed order on the assumption that the obligor is employed full-time at minimum wage. This contrasts with the current California approach which presumes an income of \$1966 (for fiscal year 1999/2000) per month when calculating support for one child. The legislature should review the current presumed income approach to determine if alternatives would yield a more appropriate child support order. If a lower presumed income was adopted, provisions could be considered for allowing either parent to be able to set aside the judgment, within a clearly circumscribed time period, and recalculate support based upon information subsequently provided.

It is also recommended that the results from the Urban Institute's study on child support debt be considered when released. It may provide further insights in the ability to pay in these presumed income cases.

USE OF GROSS INCOME VS. NET INCOME AS BASE FOR CALCULATING CHILD SUPPORT

Background



California, like 18 other states, uses net income as the base from which to compute a child support obligation. Furthermore, it sums both parents' net income in applying the formula to establish the support obligation.

Under Family Code §4059, the guideline defines what is meant by net disposable income and specifies the types of deductions that are allowed in computing net from gross income.

Overview of the Income-Base Issue

States have struggled with what income to use as the base for calculating a support obligation ever since child support guidelines were first developed. There are arguments in favor of all the different approaches that states are currently using (see Chapter IV) and the choice of one approach over another appears to be a compromise among many interests within a state. In California, there are two questions about the income base that need to be addressed:

- Should the income base be gross income or net income?
- If the guideline continues to use net income, what, if any, changes are needed to the computation of net income from gross?

In response to the first question, it appears from the guideline user survey that there is a strong preference for continuing to use net income as the base. In answer to a targeted set of questions about the use of gross or net income, respondents' opinions were (see Chapter VI):

- A plurality believed that net income is *easier* to use than gross income,
- A majority believed that net income was *more equitable* to use than gross income, and
- A majority believed that the guideline *should use* net income rather than gross income to compute support obligations.

As several respondents noted in their narrative remarks, they see the gross vs. net income issue as one of fairness, not ease of use. While gross income may be easier or simpler to use, it is not necessarily fair. Respondents liked the fact that the guideline takes account of each individual's tax situation. Moreover, once agreement is reached about what will and will not be counted in gross income, the automated guideline software computes the net income so there is little room for error.

The Family Code and its legislative history provide little in the way of guidance in determining how to equitably allocate the tax benefits/liabilities between a remarried party and their new spouse to determine net disposable income for child support purposes. Family Code section 4059 is unequivocal in requiring that net

disposable income shall be computed by deducting from annual gross income the actual amounts attributable to the state and federal income tax liability. Case law does resolve the apparent conflict between Family Code 4057.5 which generally prohibits consideration of new mate income in calculating child support and the mandate of Family Code 4059 which requires the court to take into consideration the parties' actual tax consequences in determining net disposable income. Case law provides that Family Code section 4057.5 does not prohibit the court from considering the new mate's income in allocating the tax liability or benefit between the new mate and the remarried partner. (*County of Tulare v. Campbell* (1996) 50 Cal.App.4th 847, 57 Cal.Rptr.2d 902) To illustrate why this is an issue, consider an obligee with gross income of \$1,000 per month who has a child support order for her one child. Prior to remarriage, the obligee filed as a head of household claiming herself and the one child. She remarries a man whose gross income is \$10,000 per month. They now file taxes jointly and also claim the child subject to the support order as a dependent. Obviously, her tax consequences have changed. If the child support order is modified, California Family Code §4059 (a) states that the personal income tax deductions shall bear an accurate relationship to the tax status of the parties; hence, consider the tax consequences associated with her joint return with her new spouse.

Recommendations Regarding Use of Gross Income vs. Net Income

The California Child Support Guideline should continue to rely on disposable net income as the base used to compute a support obligation amount. Disposable net income bases support on the actual amount of money which is reasonably available for support. Net income excludes mandatory deductions such as retirement or union dues. Net income also accounts for the differences in tax consequences based on such factors as the availability of dependency exemptions. This approach takes into account that people who are similarly situated with regard to gross income may have quite different levels of net income based on the nature of their deductions and their individual life circumstances.

The legislature should also review the issue of how to allocate the tax consequences between a remarried party and their new spouse for the purposes of determining the net disposable income of that remarried party. In resolving this issue, the legislature should carefully review the various alternatives to determine the most equitable statutory solution (see discussion at Chapter IV Section 3). The current gap in guidance in this area can result in a lack of uniform application of the guideline statewide.

ADDITIONAL DEPENDENTS

Background



There are two provisions in the existing guideline of most relevance to additional dependents.

- Family Law Code §4059(e) applies to any child support actually being paid for an additional dependent that does not reside with the parent. It simply subtracts the amount paid from the eligible parent's income.
- Family Law Code §4071 (the Hardship Deduction) applies to additional dependents living with the parent. A hardship deduction can be subtracted from the parent of the additional dependent, prior to calculating child support for the prior children. The amount of the hardship deduction cannot exceed the support allocated per child subject to the order.

Overview of the Additional Dependents Adjustment

As evident from the guideline user survey, respondents generally believed that the guideline treats the issue of additional dependents adequately. However, this opinion differed by the identity of the respondent, with respondents from the IV-D child support community rating the adjustment as more adequate and parents rating it as less adequate. The ratings from judges and family law attorneys were in between the ratings of the other groups.

Regardless of these findings, George Norton, a preeminent family law expert, finds two mathematical flaws with the additional dependent adjustment covered under the hardship provision.

- The dollar amount for the hardship deduction could exceed the net income of the eligible parent. Thus, once the deduction is subtracted, the parent with the additional dependent could be left with a negative net income.
- The dollar amount of the hardship deduction is capped by the support allocated each child subject to the order. To illustrate why this is a problem, consider a case where parents have equal incomes and joint (50-50) physical custody of their children. In this situation, the child support order would be \$0. Thus, the amount of the hardship deduction could not be more than \$0 regardless of many additional dependents there are.

Recommendations Regarding Additional Dependents

The California Child Support Guideline should maintain the two existing provisions regarding additional dependents. The Guideline should continue to allow a mandatory deduction for child support actually being paid for a child other than the

child (ren) for whom support is being established. The Guideline should also continue to allow a hardship deduction for other child (ren) (and/or parents) which the party is legally obligated to support and who reside in the home of that party.

In addition, the legislature should consider correcting a minor mathematical error that occurs if the hardship deduction exceeds the parent's net income, which results in a negative net disposable income for the eligible parent. This can be easily corrected by limiting the minimum amount of net disposable income to \$0. In other words, a parent's net disposable income used in a guideline calculation can never be less than \$0. Similar provisions exist in other states.

Although the solution to the second mathematical flaw obviously calls for a modification to what the maximum hardship deduction can be, the issue is difficult. Most states use a "dummy order" to adjust for additional dependents living in the home with the parent. That is, they compute an order for the additional dependent based on the eligible parent's income only. In turn, this amount — the dummy order— is subtracted from the eligible parent's income prior to calculating the support order. In some states, the dummy order is reduced by 25 percent to equalize support between the two sets of children (i.e., those for whom support is being determined and the additional dependents).

Policy Studies Inc. conducted several simulations applying the "dummy order approach" to the California guideline. It yielded large differences between: (a) the order amount prior to the adjustment and (b) the order amount with the dummy order adjustment. In some scenarios, the use of the dummy order caused a change in which parent was the obligor. The differences are much larger than those in states using the dummy order approach. The reason for this disparity is that the basic formula in the California guideline is significantly different from the basic formulae in guidelines that include the dummy order approach. (Most states using the dummy order approach have similar basic child support formulae.)

Exhibit VIII-1 further illustrates this point. It considers a scenario where

- the parents have equal net incomes (\$3,000 per month);
- the support order is being determined for two children;
- physical custody is split equally (50-50 time split); and,
- the father has one additional dependent.

As displayed in row (1) of Exhibit VIII-1, if no adjustment for the additional dependent is granted, the support order would be \$0 per month. If the existing hardship deduction is applied, the support order would still be \$0 per month because the amount of the hardship deduction cannot exceed that of the support order. This is shown in row (2) of Exhibit VIII-1. The effects of a dummy order, set at 100 percent and 50 percent, are displayed in rows (3) and (4). The mother would owe the father \$216 and \$108 per month if a 100 percent or 50 percent dummy order



were applied, respectively. Relative to other states, these amounts are high. As a result, the dummy order approach may not be appropriate for California.

| Exhibit VIII-1 Effect of Various Adjustments for Additional Dependents | | | | |
|---|--|--|--|----------------------------|
| Mother's Net Income = Father's Net Income = \$3,000 Support is being determined for two children Father has one additional dependent Parents have equal custody of the children (50%/50% time split) | | | | |
| Row | State Guideline and Additional Dependent Adjustment | Amount of Adjustment for Additional Dependents | Father's Income after Adjustment for Additional Dependents Is Subtracted | Final Monthly Order Amount |
| (1) | California Guideline (No Adjustment) | \$ 0 | \$3,000 | \$0 |
| (2) | California Guideline (Existing Hardship Deduction) | \$ 0 | \$3,000 | \$0 |
| (3) | California Guideline (100% Dummy Order) | \$720 | \$2,280 | Mother owes father \$216 |
| (4) | California Guideline (50% Dummy Order) | \$360 | \$2,640 | Mother owes father \$108 |
| (5) | California Guideline (50% of Minimum Basic Standard of Adequate Care) ^a | \$195 ^a | \$2,815 | Mother owes father \$58 |

^a The minimum basic standard of adequate care was \$390 per month in FY1999/2000.

An alternative approach would be to modify the existing cap on the hardship deduction such that it is the greater of:

- the support allocated per child subject to the order (which is the current specification), and
- 50 percent of the current minimum basic standard of adequate care as specified in the Welfare and Institutions Code §11452.

Reducing the current minimum basic standard of adequate care by 50 percent to account for circumstances in which the additional dependent has two parents is also a possibility. It is assumed that the other parent of the additional dependent is financially responsible for the other half of the minimum basic standard of adequate care.

By adding the second provision, an adjustment would be applicable under the scenario depicted in Exhibit VIII-1, but it would not be as large of that of a dummy

order approach. As shown in row (5), the mother would owe the father \$58 per month. This second provision would result in a constant amount being subtracted for the hardship deduction regardless of the parent's income and time-sharing arrangements. Inclusion of the first provision allows the amount of the hardship deduction to vary.
